

Appeal from a decision of the Montana State Office, Bureau of Land Management, declaring mining claims abandoned and void for failure to file rental fees or meet the filing requirements for a small miner exemption. MMC 51398-MMC 51400, MMC 51415-MMC 51416.

Decision affirmed; petition for stay denied as moot.

1. Mining Claims: Abandonment--Mining Claims: Rental or Claim Maintenance Fees: Generally--Mining Claims: Rental or Claim Maintenance Fees: Small Miner Exemption

A claimant seeking a small miner exemption must timely file a certified statement including the information required by 43 CFR 3833.1-7(d). Where a timely certified statement is filed, but there is an unintentional failure to file all of the information required by that regulation, BLM is required to notify the claimant of the deficiency and provide 30 days from receipt of the notice within which to file the requested information. Failure to file the information within the time allowed results in a conclusive presumption of abandonment of the mining claims, millsites, or tunnel sites.

APPEARANCES: William C. Harrison, Spokane, Washington, pro se.

OPINION BY ADMINISTRATIVE JUDGE KELLY

William C. Harrison has appealed from a June 7, 1994, decision of the Chief, Solid Minerals Adjudication Section, Montana State Office, Bureau of Land Management (BLM), declaring the Lee #W-1 Fraction, Lee #1, Lee #2, Lee #18 and Lee #A-18 mining claims (MMC 51398-MMC 51400, MMC 51415-MMC 51416) abandoned and void for failure to either pay the rental fees, as required by the Department of the Interior and Related Agencies Appropriations Act for Fiscal Year 1993 (Act), P.L. 102-381, 106 Stat. 1378-79 (1992), and 43 CFR 3833.1-5, or satisfy the filing requirements of 43 CFR 3833.1-7(d) for exemption from payment of the rental fees for the 1993 and 1994 assessment years.

Appellant has petitioned for a stay pursuant to 43 CFR 4.21(a) and has filed a statement of reasons pursuant to 43 CFR 4.412.

The record indicates that on August 31, 1993, appellant filed one "Certificate of Exemption from Payment of Rental Fee" for the claims in question for the 1993 assessment year and another for the 1994 assessment year, as required by 43 CFR 3833.1-7(d), and a Notice of Intent to Conduct Mining Operations on National Forest Land.

On February 28, 1994, BLM sent an Additional Requirements Notice to appellant stating that it was unable to accept the Certificates of Exemption for two reasons. First, it stated that the Notice of Intent filed with the Certificates did not "show that your claims are covered under a Notice or approved Plan of Operations." Second, it noted that there was a discrepancy between the location of the claims as stated on the Notice and the claims as listed on the certificates of location and as shown on the maps recorded with BLM. While appellant's Notice stated that the claims were located in T. 17 N., R. 27 W., secs. 6 and 7, the certificates of location show all of the claims to be located in secs. 19, 20, 30, or 31 of T. 18 N., R. 26 W.

Appellant was given 30 days from the date of his receipt of BLM's notice to provide documentation that his claims were covered by a Notice or approved Plan of Operations and to provide verification of the location of his claims. The record contains a return receipt card showing that appellant received BLM's response on March 3, 1994, but the record does not indicate appellant filed a response. Subsequently, BLM issued its June 7 decision and this appeal ensued.

[1] The requirements for the certified statement requesting a rental fee exemptions are set forth at 43 CFR 3833.1-7(d). One of those requirements is to provide "[t]he serial number(s) or other designation(s) assigned by the Federal land management agency to the Notice(s), Plan(s) of Operations * * * covering the mining claim or claims for which the exemption is sought." 43 CFR 3833.1-7(d)(1). Appellant's Notice of Intent filed with his certificates did not include any serial number or other designation assigned by the Forest Service.
1/

The regulations provide at 43 CFR 3833.4(b) that the "[u]nintentional failure to file the complete information required in * * * 43 CFR 3833.1-7(d) * * *, when the document is otherwise filed on time," does not result in the claim or site being deemed conclusively abandoned. That regulation establishes a procedure for BLM to give notice to claimants of deficiencies in filings and it allows the opportunity to cure. Thus, the regulation states:

1/ There were other deficiencies in appellant's certificates. He did not include a declaration that he owned 10 or fewer mining claims or sites, as required by 43 CFR 3833.1-7(d)(3). Also, he failed to include the declaration required by 43 CFR 3833.1-7(d)(6), regarding unreclaimed surface disturbance.

[S]uch information shall be filed within 30 days of receipt of a notice from the authorized officer calling for such information. Failure to file the information requested by the decision of the authorized officer shall result in the mining claim, mill site,
or tunnel site being deemed conclusively to be abandoned and it shall be void.

43 CFR 3833.4(b).

BLM followed that procedure in this case. It allowed appellant 30 days from receipt of its February 28, 1994, notice to file documentation regarding his Notice of Intent. Although not required by 43 CFR 3833.1-7(d), BLM's notice also requested verification of the location of appellant's claims. 2/

In this case, appellant did not pay the rental fees, and although he filed certificates for exemption, he did not respond to BLM's notice. By regulation, the failure to file the documentation requested in that notice results in a conclusive presumption of abandonment 43 CFR 3833.4(b). Accordingly, we conclude that BLM properly declared appellant's claims abandoned and void. 3/

The Department is without authority to excuse lack of compliance with the rental fee requirement of the Act, to extend the time for compliance, or to afford any relief from the statutory consequences, and the Board may not consider special facts or provide relief in view of mitigating circumstances. Lee H. & Goldie E. Rice, 128 IBLA 137, 141 (1994).

Our disposition of this appeal on the merits renders a ruling on appellant's petition for stay moot.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed and the petition for stay is denied as moot.

John H. Kelly
Administrative Judge

I concur:

Bruce R. Harris
Deputy Chief Administrative Judge

2/ However, BLM did not enumerate in its notice the other deficiencies listed in note 1, supra.

3/ None of the arguments presented by appellant in his statement of reasons provides any basis for concluding that he timely respond to BLM's Feb. 28, 1994, notice or that he had any legitimate basis for failing to do so.

